

The Senate Judiciary Committee offered the following substitute to HB 185:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated,
2 relating to emergency powers, so as to revise the courts to which a challenge of a quarantine
3 or vaccination order may be brought; to revise the manner of appealing orders concerning
4 such challenges; to remove the Chief Judge of the Court of Appeals from the definition of
5 authorized judicial officials for certain judicial emergencies; to extend the duration of a
6 judicial emergency order when a public health emergency exists; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

9 Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to
10 emergency powers, is amended by revising subsection (i) of Code Section 38-3-51, relating
11 to emergency powers of the Governor, as follows:
12

13 "(i)(1) The Governor may direct the Department of Community Health to coordinate all
14 matters pertaining to the response of the state to a public health emergency including
15 without limitation:

16 (A) Planning and executing public health emergency assessments, mitigation,
17 preparedness response, and recovery for the state;

18 (B) Coordinating public health emergency responses between state and local
19 authorities;

20 (C) Collaborating with appropriate federal government authorities, elected officials of
21 other states, private organizations, or private sector companies;

22 (D) Coordinating recovery operations and mitigation initiatives subsequent to public
23 health emergencies;

24 (E) Organizing public information activities regarding state public health emergency
25 response operations; and

- 26 (F) Providing for special identification for public health personnel involved in a public
 27 health emergency.
- 28 (2) The following due process procedures shall be applicable to any quarantine or
 29 vaccination program instituted pursuant to a declaration of a public health emergency:
- 30 (A) Consonant with maintenance of appropriate quarantine rules, the department shall
 31 permit access to counsel in person or by such other means as practicable that do not
 32 threaten the integrity of the quarantine;
- 33 (B) An order imposing a quarantine or a vaccination program may be appealed but
 34 shall not be stayed during the pendency of the challenge. The burden of proof shall be
 35 on the state to demonstrate that there exists a substantial risk of exposing other persons
 36 to imminent danger. With respect to vaccination, the state's burden of proof shall be
 37 met by clear and convincing evidence. With respect to quarantine, the state's burden
 38 of proof shall be met by a preponderance of the evidence;
- 39 (C) An individual or a class may challenge the order before any available judge of ~~the~~
 40 ~~state courts~~, the superior courts, ~~the Court of Appeals~~, or ~~the Supreme Court~~ in the
 41 county where the individual or a member of the class resides or in Fulton County. Such
 42 judge, upon attestation of the exigency of the circumstances, may proceed ex parte with
 43 respect to the state or may appoint counsel to represent the interests of the state or other
 44 unrepresented parties. The judge hearing the matter may consolidate a multiplicity of
 45 cases or, on the motion of a party or of the court, proceed to determine the interests of
 46 a class or classes. The rules of evidence applicable to civil cases shall be applied to the
 47 fullest extent practicable taking into account the circumstances of the emergency. All
 48 parties shall have the right to subpoena and cross-examine witnesses, but in
 49 enforcement of its subpoena powers the court shall take into account the circumstances
 50 of the emergency. All proceedings shall be transcribed to the extent practicable. Filing
 51 fees shall be waived and all costs borne by the state;
- 52 (D) The judge hearing the matter may enter an appropriate order upholding or
 53 suspending the quarantine or vaccination order. With respect to vaccination, the order
 54 may be applicable on notice to the department or its agents administering the
 55 vaccination, or otherwise in the court's discretion. With respect to quarantines, the
 56 order shall be automatically stayed for 48 hours;
- 57 (E) The department or any party may immediately appeal any order ~~within 24 hours~~
 58 ~~to the Court of Appeals~~, the Supreme Court pursuant to Code Section 5-6-34. The
 59 Supreme Court, or ~~to~~ any available ~~judge~~ Justice thereof, in the event that
 60 circumstances render a full court unavailable, shall consider the appeal on an expedited
 61 basis and may suspend any time requirements for the parties to file briefs. In the event
 62 no Justice is available, then a panel of the Court of Appeals, or any judge thereof, in the

63 event that circumstances render a panel unavailable, shall consider the appeal on an
 64 expedited basis and may suspend any time requirements for the parties to file briefs.
 65 If the trial judge has proceeded ex parte or with counsel appointed for the state, the trial
 66 court shall either direct the filing of an appeal in its order or itself certify the order for
 67 appeal. Filing fees for appeal shall be waived, all costs shall be borne by the state, and
 68 such appeals shall be heard expeditiously; and
 69 (F) No provisions of this paragraph shall be construed to limit or restrict the right of
 70 habeas corpus under the laws of the United States."

71 **SECTION 2.**

72 Said article is further amended by revising paragraph (1) of Code Section 38-3-60, relating
 73 to definitions regarding judicial emergencies, as follows:

74 "(1) 'Authorized judicial official' means any of the following officials when acting with
 75 regard to his or her respective jurisdiction:

76 (A) The Chief Justice of the Georgia Supreme Court;

77 ~~(B) The Chief Judge of the Georgia Court of Appeals;~~

78 ~~(C)(B)~~ A chief judge of a Georgia superior court judicial circuit; or

79 ~~(D)(C)~~ The replacement for or successor to any of the officials set forth in
 80 subparagraphs (A) ~~through (C)~~ and (B) of this paragraph, as determined by the
 81 applicable rules of incapacitation and succession, should such official become
 82 incapacitated or otherwise unable to act."

83 **SECTION 3.**

84 Said article is further amended by revising subsection (b) of Code Section 38-3-61, relating
 85 to declaration of judicial emergency, as follows:

86 "(b) An order declaring the existence of a judicial emergency shall be limited to an initial
 87 duration of not more than 30 days; provided, however, that the order may be modified or
 88 extended for no more than two periods not exceeding 30 days each unless a public health
 89 emergency exists as set forth in Code Section 38-3-51, in which case the Chief Justice of
 90 the Supreme Court of Georgia may extend the emergency order for so long as such
 91 emergency exists, as declared by the Governor. Any modification or extension of the
 92 initial order shall require information regarding the same matters set forth in subsection (a)
 93 of this Code section for the issuance of the initial order."

94 **SECTION 4.**

95 All laws and parts of laws in conflict with this Act are repealed.